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**State of Wisconsin**

**Department of Health Services**

May 13, 2014

Otis Woods, Administrator  
Division of Quality Assurance  
WI Department of Health Services  
1 West Wilson Street  
Madison WI 53702

RE: DQA IJ Nursing Home Process and Procedures Review

Dear Administrator Woods:

At your request the Department of Health Services' Office of the Inspector General conducted an assessment of the Division of Quality Assurance's (DQA) Immediate Jeopardy (IJ) procedures for nursing homes to evaluate compliance with CMS' IJ guidelines. The attached final report was completed by our Office's Internal Audit Section and it includes a description of the audit objectives and scope, as well as our assessment and our conclusions. Your Division's response to the report is also included, as Attachment 1.

No formal management or corrective action plans are required as a result of this review, and as such, no formal follow-up will occur by this Office.

We appreciate the assistance and cooperation received during the course of the audit. If you have questions, please contact Margie Kriel, OIG Internal Auditor at (608) 266-6978.

Sincerely,

A handwritten signature in black ink, appearing to read "ASW".

Alan S. White, Inspector General  
Office of the Inspector General  
Wisconsin Department of Health Services

cc: Secretary's Office (Kitty Rhoades, Kevin Moore and Renee O'Day)  
Juan Flores, Director, Bureau of Nursing Home Resident Care, Division of Quality Assurance



# Internal Audit Report

## Assessment of Division of Quality Assurance Immediate Jeopardy Procedures – Nursing Homes for Compliance with CMS Guidelines

Office of the Inspector General

5/1/2014

Classification: DHS Internal Use

**Assessment of Division of Quality Assurance Immediate Jeopardy Procedures –  
Nursing Homes- for Compliance with CMS Guidelines – May 2014**

Report Cover Page	Un-numbered
Table of Contents	Page 1
Executive Summary	Page 2 & 3
<i>Background And Relevant Components –Section</i>	<i>Page 4 - 7</i>
At the Federal Level	Page 4 & 5
At the State Level	Page 5 & 6
Immediate Jeopardy Definitions, Principles and Components	Page 6
Principles of Immediate Jeopardy	Page 6
Three Components of Immediate Jeopardy	Page 7
<i>Internal Audit Report Objectives and Review - Section</i>	<i>Page 8 -14</i>
Scope and Objectives of the Engagement	Page 8
Audit Methods and Immediate Jeopardy Compliance Review	Page 8
Process Flow – DQA Procedure #2221	Page 8 & 9
Process Flow – Procedures and Implementation - SOM Appendix Q:	Page 9 & 10
Internal Audit’s Assessment of Process Flows	Page 11
Internal Audit’s IJ Call Observation and Assessment of Compliance with Procedures:	Page 12 & 13
Conclusions	Page 13
<i>Attachment 1 DQA Comments &amp; Response.</i>	<i>Page 14 &amp; 15</i>

## EXECUTIVE SUMMARY

The State Survey Agency and surveyors located within the Wisconsin Department of Health Services (DHS), Division of Quality Assurance (DQA) must be able to accurately identify, thoroughly investigate and quickly resolve Immediate Jeopardy crisis situations in which the health and safety of individuals receiving care and/or services from Medicare/Medicaid certified entities/facilities is at risk. Surveyors may encounter instances during the course of their survey and certification work that have the potential to meet the definition of Immediate Jeopardy. Both the federal Centers for Medicare & Medicaid Services (CMS) and DQA have developed guidelines, policy, process and procedures to assist the surveyors and the State Survey Agency with the requirements for handling and processing Immediate Jeopardy.

At the request of the Administrator of the Division of Quality Assurance (DQA) within the Wisconsin Department of Health Services (DHS), the Wisconsin DHS Inspector General (OIG) approved the use of Internal Audit resources to conduct a review of the DQA Immediate Jeopardy (IJ) process and procedures to:

- Perform an assessment of the DQA IJ procedures for Nursing Homes, for compliance with CMS guidelines.
- Perform an assessment of a sampling of case(s) to verify that procedures were followed for determining Immediate Jeopardy and severity

More specifically, the scope of this engagement is limited to an assessment of DHS/DQA *Procedure Summary #2221 - Immediate Jeopardy/Class A-Process*, which describes the flow and DQA process of decision-making for federal immediate jeopardy deficiencies and state Class A violations, for compliance with The Centers for Medicare & Medicaid Services (CMS) *State Operations Manual (SOM) Appendix Q - Guidelines for Determining Immediate Jeopardy - (Rev. 1, 05-21-04)*.

The purpose of DHS/DQA *Procedure #2221 - Immediate Jeopardy/Class A-Process* is to describe the flow and process of decision-making for federal immediate jeopardy deficiencies and state Class A violations. This procedure is intended to provide for more time and consistency in decision-making on serious deficiencies/violations.

The primary goals of the Immediate Jeopardy guidelines found in the *State Operations Manual (SOM) Appendix Q - Guidelines for Determining Immediate Jeopardy* are to identify and to prevent serious injury, harm, impairment, or death to an individual in a Medicare/Medicaid entity/facility. Appendix Q guidelines are intended for use in determining if circumstances pose an Immediate Jeopardy to an individual's health and safety. These guidelines assist Federal and State Survey and Certification personnel and Complaint Investigators in recognizing situations that may cause or permit Immediate Jeopardy

## CONCLUSIONS

Based upon Internal Audit's interviews, inquiries, observations, comparisons and inspection of documents we concluded that:

- 1) DQA follows their Immediate Jeopardy procedures within the scope of *Procedure Summary #2221 - Immediate Jeopardy/Class A-Process*.
- 2) DQA follows the guidance provided by CMS within the scope of *SOM Appendix Q - Guidelines for Determining Immediate Jeopardy*.

3) DQA's Procedure #2221 complies with CMS Guidelines in SOM *Appendix Q*.

Overall, Internal Audit determined the current IJ process and procedures are compliant with CMS guidance. Internal Audit personnel noted the following two observations that, if addressed, could strengthen the tracking and documentation of the volume and characteristics of IJ Calls:

- **Track the Number of Calls Where No IJ Call was Scheduled.** These are the calls from the field surveyors, Regional Field Office Supervisors (RFOSs) and/or the Regional Field Office Directors (RFODs) to the Central Office Quality Assurance Program Specialist (QAPS) where the consensus is that the circumstances do not appear likely to warrant use of the IJ Call process.
- **Continue to use a Methodology that allows DQA to Track and Count the Outcome of all IJ Calls that were Actually Held, whether a citation for IJ is issued or not.**

No formal management action plans are required as a result of this review, and as such, no formal follow-up will occur by Internal Audit.

## BACKGROUND AND RELEVANT COMPONENTS

### *At the Federal Level:*

The Social Security Act (the Act) mandates the establishment of minimum health and safety standards that must be met by providers and suppliers participating in the Medicare and Medicaid programs. These standards are found in the 42 Code of Federal Regulations.

The federal Secretary of the Department of Health and Human Services (HHS) has designated the Centers for Medicare & Medicaid Services (CMS) to administer the standards and provide oversight for compliance by facilities serving Medicare and Medicaid beneficiaries.

Overall policy-making responsibility is with CMS where all aspects of the Medicare program and oversight of the State Medicaid programs are coordinated. CMS is responsible for:

- Monitoring, surveillance, and overall administrative control of the certification process, including its financial and surveyor training aspects;
- Establishing operational policy for the certification process;
- Conveying operational instructions and official interpretations of policy to the State Survey Agencies (SAs) and CMS' regional offices (ROs).

The CMS Regional Offices have been delegated the authority by the Secretary for assuring that health care providers and suppliers participating in the Medicare and Medicaid meet applicable Federal requirements. Some of the ROs responsibilities include:

- Evaluating the performance of SAs in interpreting and applying health and safety standards, their assessments of providers and suppliers for compliance with standards, and their use of appropriate administrative procedures;
- Providing liaison, direction, and technical assistance to SAs in the day-to-day management of the certification process;
- Interpreting CMS guidelines, policies, and procedures applicable to certification activities;
- Conducting surveillance and assessments of SA operations and assisting SAs in developing the capability to provide direct assistance to providers and suppliers;
- Reviewing SA certification actions; and providing feedback to States;
- Preparing data based on SA survey findings for input into CMS' Automated Survey Processing Environment (ASPEN), Online Data Input and Edit (ODIE) system, which is a subsystem of the Online Survey Certification and Reporting (OSCAR) system, a database and retrieval program; analyzing OSCAR data, and providing feedback to SAs on certification information tracked by the system; and
- Conducting Federal surveys of providers and suppliers to ensure that standards and procedures are being applied in a uniform and consistent manner.

CMS provides/issues operational and program policy and procedures and guidance based on statutes, regulations, guidelines, models, day-to-day operating instructions, and directives. One key guidance source from the State Survey Agency perspective can be found in Publication #100-07, the *State Operations Manual (SOM)*, which is made up of eight chapters, exhibits and appendices.

The focus of this engagement was on the *State Operations Manual - Appendix Q - Guidelines for Determining Immediate Jeopardy - (Rev. 1, 05-21-04)*. The guidelines found in Appendix Q were established to help address CMS' concern that crisis situations where the health and safety of individuals are at risk, must be accurately identified, thoroughly investigated and resolved as quickly as possible. In the interest of consistency, the guidelines in Appendix Q standardize the definitions of Immediate Jeopardy, abuse and neglect across all certified Medicare/Medicaid entities and describe the process surveyors use in making a determination of Immediate Jeopardy. The Guidelines provide a detailed analysis of the steps surveyors should follow to assist them in accurately identifying those circumstances which constitute Immediate Jeopardy: preparation, investigation, decision-making and implementation. The primary goals of the Immediate Jeopardy guidelines are to identify and to prevent serious injury, harm, impairment, or death.

***At the State Level:***

The Department of Health Services (DHS), Division of Quality Assurance (DQA) serves as the Wisconsin State Survey Agency (SA), under agreements between the State and the Secretary of HHS, to carry out the Medicare certification process. The SA is also authorized to set and enforce standards for Medicaid. State SAs perform initial surveys (inspections) and periodic resurveys (including complaint surveys) of all providers and certain kinds of suppliers, to ascertain whether a provider/supplier meets applicable requirements for participation in the Medicare and/or Medicaid programs. Surveys also evaluate performance and effectiveness in rendering a safe and acceptable quality of care.

The functions that the SAs perform on behalf of CMS under the agreements in §1864 of the Act are referred to collectively as *the certification process*. This includes, but is not limited to:

- A. Identifying Potential Participants - The law guarantees to Medicare beneficiaries that payment will be made for health services furnished in or by entities that meet stipulated requirements of the Act.
- B. Conducting Investigations and Fact-Finding Surveys - Verifying how well the health care entities comply with the Conditions of Participation (CoPs) or requirements.
- C. Certifying and Recertifying - Certifications are periodically sent to the appropriate Federal or State agencies regarding whether entities are qualified to participate in the programs.
- D. Explaining Requirements - Advising providers and suppliers and potential providers and suppliers in regard to applicable Federal regulations to enable them to qualify for participation in the programs and to maintain standards of health care consistent with the CoPs and Conditions for Coverage (CfCs) requirements.

In performing the duties and responsibilities of the Wisconsin State Survey Agency, DQA surveyors may encounter circumstances during the course of their survey and certification work, which pose an Immediate Jeopardy to an individual's health and safety. Thus, surveyors need adequate resources and training to understand the definition of Immediate Jeopardy and must be familiar with both DQA and federal guidelines and procedures. Surveyors, their supervisors and the Survey Agency's administration must be able to accurately identify, thoroughly investigate and quickly resolve Immediate Jeopardy crisis situations in which the health and safety of

individuals receiving care and/or services from Medicare/Medicaid certified entities/facilities is at risk.

Both CMS and DQA have developed guidelines, policy, process and procedures to assist the surveyors and the State Survey Agency with the requirements for handling and processing Immediate Jeopardy. For this engagement, we focused on DHS/DQA *Procedure #2221 - Immediate Jeopardy/Class A-Process*, as the internal descriptor of the steps utilized within DQA for making a determination of Immediate Jeopardy.

***Immediate Jeopardy Definitions, Principles and Components:***

The overall goal of the survey process is to ensure the provision of quality care to all individuals receiving care or services from a certified Medicare/Medicaid entity. Immediate Jeopardy is interpreted as a crisis situation in which the health and safety of individual(s) are at risk. The identification and removal of Immediate Jeopardy, either psychological or physical, is essential to prevent serious harm, injury, impairment, or death for individuals receiving care or services in a Medicare/Medicaid entity/facility.

The State Operations Manual *Appendix Q - Guidelines for Determining Immediate Jeopardy* is for use in determining if circumstances pose an Immediate Jeopardy to an individual's health and safety. These guidelines assist Federal and State Survey and Certification personnel and Complaint Investigators in recognizing situations that may cause or permit Immediate Jeopardy.

***Immediate Jeopardy is Defined as:*** "A situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident." (See 42 CFR Part 489.3.)

***Principles of Immediate Jeopardy:***

The identification and removal of Immediate Jeopardy, either psychological or physical, are essential to prevent serious harm, injury, impairment, or death for individuals. Surveyors must understand the following Principles of Immediate Jeopardy:

- Only ONE INDIVIDUAL needs to be at risk. Identification of Immediate Jeopardy for one individual will prevent risk to other individuals in similar situations.
- Serious harm, injury, impairment, or death does NOT have to occur before considering Immediate Jeopardy. The high potential for these outcomes to occur in the very near future also constitutes Immediate Jeopardy.
- Individuals must not be subjected to abuse by anyone including, but not limited to, entity staff, consultants or volunteers, family members or visitors.
- Serious harm can result from both abuse and neglect.
- Psychological harm is as serious as physical harm.
- When a surveyor has established through investigation that a cognitively impaired individual harmed an individual receiving care and services from the entity due to the entity's failure to provide care and services to avoid physical harm, mental anguish, or mental illness, this should be considered neglect.
- Any time a team cites abuse or neglect, it should consider Immediate.



***Three Components of Immediate Jeopardy:***

Surveyors and the SA must determine whether the following three components of Immediate Jeopardy are present by addressing this series of information clarifying questions, before making a determination of Immediate Jeopardy:

**1. Harm**

a. **Actual** - Was there an outcome of harm? Does the harm meet the definition of Immediate Jeopardy, e.g., has the provider's noncompliance caused serious injury, harm, impairment, or death to an individual?

b. **Potential** - Is there a likelihood of potential harm? Does the potential harm meet the definition of Immediate Jeopardy; e.g., is the provider's noncompliance likely to cause serious injury, harm, impairment, or death to an individual?

**2. Immediacy** - Is the harm or potential harm likely to occur in the very near future to this individual or others in the entity, if immediate action is not taken?

**3. Culpability**

a. Did the entity know about the situation? If so when did the entity first become aware?

b. Should the entity have known about the situation?

c. Did the entity thoroughly investigate the circumstances?

d. Did the entity implement corrective measures?

e. Has the entity re-evaluated the measures to ensure the situation was corrected?

## INTERNAL AUDIT REPORT OBJECTIVES AND REVIEW

### ***Scope and Objectives of the Engagement:***

At the request of the Administrator of the Division of Quality Assurance (DQA) within the Wisconsin Department of Health Services (DHS), the Wisconsin DHS Inspector General (OIG) approved the use of Internal Audit resources to conduct a review of the DQA Immediate Jeopardy (IJ) process and procedures to:

- Perform an assessment of the DQA IJ procedures for compliance with CMS guidelines.
- Perform an assessment of a sampling of case(s) to verify that procedures were followed for determining Immediate Jeopardy and severity.

More specifically, the scope of this engagement is limited to an assessment of DHS/DQA *Procedure Summary #2221 - Immediate Jeopardy/Class A-Process*, which describes the flow and DQA process of decision-making for federal immediate jeopardy deficiencies and state Class A violations, for compliance with The Centers for Medicare & Medicaid Services (CMS) *State Operations Manual (SOM) Appendix Q - Guidelines for Determining Immediate Jeopardy - (Rev. 1, 05-21-04)*.

### ***Audit Methods and Immediate Jeopardy Compliance Review:***

The State Survey Agency and surveyors located within DHS/DQA must be able to accurately identify, thoroughly investigate and quickly resolve Immediate Jeopardy crisis situations in which the health and safety of individuals receiving care and/or services from Medicare/Medicaid certified entities/facilities is at risk. To do so, surveyors, supervisors, and State Survey Agency managers and administrators must be adequately trained and must have a thorough working knowledge and understanding of the Principles and of the Components of Immediate Jeopardy.

In order to assess DQA's IJ procedures for compliance with CMS guidelines, Internal Audit utilized a combination of corroborative inquiry, observation of procedures and an inspection of documents in order to obtain sufficient, reliable, relevant and useful information in respect to the objective and scope of the engagement.

Further, Internal Audit also prepared flowcharts of the IJ process as detailed by *Procedure Summary #2221 - Immediate Jeopardy/Class A-Process*, and of the process described by the *SOM Appendix Q - Guidelines for Determining Immediate Jeopardy* to assist in the compliance assessment.

### ***Process Flow – DQA Procedure #2221:***

The steps as described within DQA's *Procedure Summary #2221 - Immediate Jeopardy/Class A-Process* are:

- Surveyor identifies possible immediate jeopardy based on State Operations Manual (SOM) Appendix Q. Surveyor contacts the Team Coordinator.
- Team Coordinator immediately contacts the Regional Field Operations Supervisor (RFOS). The RFOS contacts the Regional Field Operations Director (RFOD). If the RFOD agrees, the RFOD contacts the Quality Assurance Program Specialist to set up an immediate jeopardy/class A phone call. Surveyor writes draft citation, when possible.
- Quality Assurance Program Specialist sets up a phone conference for discussion of the possible immediate jeopardy/class A. Those invited to the conference call include the

- surveyors, Field Operations Supervisors, Field Operations Directors, appropriate discipline consultants and an enforcement specialist.
- Quality Assurance Program Specialist coordinates/moderates IJ/Class A discussion. Surveyor outlines concerns and responds to questions from those on the call. Quality Assurance Program Specialist walks through the questions as found in Appendix Q.
  - Participants in IJ/Class A phone call determine if immediate jeopardy exists. If so, participants determine when the jeopardy began and whether the jeopardy has been removed and, if so, the date of removal and the scope/severity level at which the deficient practice continues to exist. If jeopardy continues to exist, the participants decide the steps the facility must take to protect residents at this time.
  - Survey Team notifies the Administrator that immediate jeopardy does exist and the steps that need to be implemented for resident safety.
  - Survey Team monitors the health safety and welfare of the residents on-site, if necessary.
  - Survey Team informs the nursing home administrator that if the situation is not removed by exit, an immediate jeopardy deficiency will be issued and a 23-day termination will be initiated. Also informs the administrator that investigation will continue for possible Class A or B violations. The Survey Team records the time and contents of the discussion with the administrator.
  - Survey Team proceeds with standard survey and Class A and B investigations.

***Process Flow – Procedures and Implementation - SOM Appendix Q:***

The procedure and implementation steps as described within SOM *Appendix Q - Guidelines for Determining Immediate Jeopardy* are:

**PROCEDURES:**

**A – Preparation Phase** - The team should be familiar with the contents of Appendix Q. The guidelines should be foremost in the team’s mind to decrease the potential for missing Immediate Jeopardy.

**B – Investigation Phase** - The investigation must be conducted in an impartial, objective manner to obtain accurate data sufficient to support a reasonable conclusion. ...

**Team Actions:**

- a. Notify the team leader immediately when an Immediate Jeopardy situation is suspected. The team leader will then coordinate the investigative efforts.
- b. Contact the State survey agency (SA) per the SA protocol.
- c. Gather information to address who, what, when, where and why.

**C - Decision-Making Phase** - The information gathered is used to evaluate the provision of related care and services, occurrence frequency, and the likelihood of repetition. The team needs to have gathered and validated sufficient information to address the three components of Immediate Jeopardy to begin the decision process. ...

**Team Actions:**

- Meet as a team;
- Follow Appendix Q;
- Share collected data;
- Identify the three components of Immediate Jeopardy;
- Decide if there is enough information to make a decision. If not, continue the investigation;
- Identify any inconsistencies or contradictions between interviews, observations and record reviews;

- Clarify any inconsistencies or contradictions;
- Determine the specific Federal regulation for the situation; and
- Consult with the SA, as necessary.

**Decision Making:**

- Has actual harm occurred?
- Does the actual harm that occurred meet the definition of Immediate Jeopardy?
- Is there a likelihood of potential serious harm?
- Does the potential harm meet the definition of Immediate Jeopardy?
- Is the harm likely to recur in the very near future, if immediate action is not taken?
- Did the facility have knowledge of the situation? If so when did they first become aware?
- Did they thoroughly investigate the circumstances?
- Did they implement corrective measures?
- Does this meet the definition of Immediate Jeopardy?
- Which is the most appropriate tag to define the failed practice?

**Outcome:**

- The team identifies the most appropriate regulation that applies to the situation.
- The team proceeds with documentation of the Immediate Jeopardy deficient practice.
- The SA proceeds with the termination procedures per the SOM.
- Except in the case of Medicaid-only facilities, the RO proceeds with termination actions.

**IMPLEMENTATION:**

**A - Team Actions**

If the team reaches a consensus concerning the presence of Immediate Jeopardy, the team leader then contacts the SA per the protocol established by the SA. The SA review should be expedited. If the team is unable to follow the SA protocol for administrative consultation, actions to proceed with implementation of Immediate Jeopardy must continue. Decide if any other agencies need to be notified, e.g., Law Enforcement Agency, Nurses Aide Registration Board.

**B - SA Actions**

Upon review of the findings, if the SA concurs with the team's consensus of Immediate Jeopardy, the SA will inform the RO for all Medicare and dually certified entities. For Medicaid-only facilities, the SA will notify the State Medicaid Agency. For Immediate Jeopardy in Medicaid-only facilities, contact the RO per the protocol established between the SA and the RO.

**C - Team Action – Entity/Facility Administration**

Once the team has decided that Immediate Jeopardy exists, the team should notify the administration of the Immediate Jeopardy. A verbal notice should be given with the specific details, including the individuals at risk, before the survey team leaves the premises of the entity. The entity should begin immediate removal of the risk to individuals, and immediately implement corrective measures to prevent repeat Jeopardy situations. The team should encourage the entity to provide evidence of their implementation of corrective measures.

The notice describing the Immediate Jeopardy must be delivered to the entity no later than 2 days of the end of the survey. If official notification of all deficiencies, (i.e., Form CMS-2567- Statement of Deficiencies and Plan of Correction), was not given on the second day, a completed Form CMS-2567 must be sent to the entity on the tenth working day.

***Internal Audit's Assessment of Process Flows:***

IJ Calls are typically scheduled by the Central Office Quality Assurance Program Specialist (QAPS) after that specialist has received a call from DQA staff on-site during a survey. The QAPS discusses the circumstances sufficiently enough with the survey team leader, the Regional Field Operations Supervisor (RFOS), and/or the Regional Field Operations Director (RFOD) to ascertain whether there is a "reasonable likelihood" that the field survey team may have an IJ situation at hand. The actual determination of an IJ finding however, happens during the IJ Call itself, when all call participants either agree (or disagree) that the situation meets IJ definition and criteria.

If however during this initial informal screening of the discussion between the RFOD/RFOS/surveyors and the Central Office Quality Assurance Program Specialist, the parties concur that there is either insufficient information to proceed with scheduling an IJ Call or that the situation does not rise to the level of Immediate Jeopardy and does not meet the definition of Immediate Jeopardy, then no IJ Call is scheduled at that time. Should additional information be gathered in the field that may change the likeliness of an IJ situation, then it is possible that a subsequent IJ Call will be scheduled to proceed with the previously suspended determination process.

During this engagement, Internal Audit inquired about the nature of some of DQA's tracking of IJ Call statistics and whether or not they specifically track those inquiry calls from the surveyors in the field where the preliminary consensus is that the circumstances do not appear likely to warrant use of the IJ Call process. DQA had not specifically tracked this information but will start tracking this as of the beginning of 2014. The Central Office Quality Assurance Program Specialist provided us however with an estimate that for the month of January, 2014 roughly one-third (1/3) of all calls from field survey staff to the QAPS were determined to not need to go to an IJ Call.

Internal Audit personnel noted the following observation that, if addressed, could strengthen the tracking and documentation of volume of all potential IJ calls, whether actually cited or not:

- **Track the Number of Calls Where No IJ Call was Scheduled.** These are the calls from the field surveyors, Regional Field Office Supervisors (RFOSs) and/or the Regional Field Office Directors (RFODs) to the Central Office Quality Assurance Program Specialist (QAPS) where the consensus is that the circumstances do not appear likely to warrant use of the IJ Call process.

DQA was able to provide a count of the number of IJ Calls held, and participants concluded that the survey circumstances did **not** rise to the level of an IJ citation. The nature of this count indicates that it is not a "foregone conclusion" that all IJ Calls result in a citation of IJ.

Calendar Year	Number of IJ Calls with an IJ Deficiency Citation Conclusion	Number of IJ Calls without an IJ Deficiency Citation Conclusion	Total IJ Calls	% IJ Calls resulting in an IJ Citation
2013	48	11	59	81% IJ
2012	41	16	57	72% IJ
2011	43	9	58	83% IJ

Internal Audit notes the following observation that, if addressed, could strengthen the tracking and documentation of volume and characteristics of IJ Calls actually held:

- **Continue to use a Methodology that allows DQA to Track and Count the Outcome of all IJ Calls that were Actually Held, whether a citation for IJ is issued or not.**

Overall, Internal Audit found that the flow of processes in DQA Procedure #2221 is nearly the same as the Investigation, Decision Making and Implementation phases described in the SOM *Appendix Q - Guidelines for Determining Immediate Jeopardy*. The main difference is that DQA is more specific within their State Survey Agency protocol specified by Procedure #2221 in terms of defining how (i.e., at what point) the decision making happens for a determination of IJ. DQA, through their utilization of a collaborative IJ Call process, reaches a consensus from the IJ Call participants of whether the survey situation being discussed on the IJ Call meets the criteria for Immediate Jeopardy. The IJ Call participants then agree upon any deficiency citations.

SOM-Appendix Q defines the **survey “team”** as either a single surveyor or multiple surveyors. Appendix Q allows for decision making to be performed at the survey “team” level. However, Appendix Q also states that the survey “team” should “Contact the SA per the SA protocol”. This in turn allows for some variance in State Agency protocols for the process of making an IJ determination. Accordingly, DQA’s Procedure #2221 is within the guidelines of Appendix Q.

***Internal Audit’s IJ Call Observation and Assessment of Compliance with Procedures:***

Internal Audit requested and was approved to observe the process for DQA’s Immediate Jeopardy/Class A Phone Call process (aka “IJ Call”) and the determination phase (as described within DQA Procedure #2221) for a facility with DQA survey staff on-site. The Internal Auditor observed an IJ Call together with the Director for the Bureau of Nursing Home Resident Care.

Prior to the IJ Call itself, the survey team member had notified their team leader/Supervisor immediately of a suspected Immediate Jeopardy situation. The Supervisor reviewed the information from the surveyor (who, what, when, where and why.) The Supervisor contacted the State survey agency (SA) per the SA protocol (in this case, the Quality Assurance Program Specialist). The QAPS concurred that there was a likely IJ situation and arranged for the scheduling of an IJ Call.

There were 17 participants and 2 observers on this IJ Call, which was held through the use of a telephone conference. The participants included:

- *Surveyors.* On this call, there were 4 Nurse Consultants from the Regions.
- *Regional Field Operations Supervisors.* - 5 RFOSs from the Regions.
- *Regional Field Operations Directors.* - 3 RFODs from the Regions.

- *Staff from appropriate disciplines; 2 Health Services Specialists from Regions, 1 Nurse Consultant from Central Office, 2 Quality Assurance Program Specialists.*

Observers (2):

- *Bureau Director, DQA Bureau of Nursing Home Resident Care.*
- *Internal Auditor – OIG*

The IJ Call participants listened to a description of the circumstances as presented by the surveyor. The participants asked a multitude of clarifying questions of the surveyor. Some additional information was provided by an on-site supervisor. No particular participant dominated the discussion/questioning phase. All participants were provided the opportunity to ask additional questions and express any thoughts/concerns. The Quality Assurance Program Specialist then asked if the participants had enough information to make a decision, and systematically reviewed the components of Immediate Jeopardy, asking for the participant's conclusion using the "Decision Making" questions. (Refer to the "Decision Making" list of questions found earlier in this report on page 9, and 10)

After completing this segment of the IJ Call, participants then determined the appropriate citation tag to define the failed practice, the scope and severity of the deficiency and noted the dates when the deficient practice began and also, whether or not the deficiency has been remediated by the entity/facility as of the timing of this IJ Call.

As one example of the conclusion reached during this particular IJ Call, the team identified a deficient practice at Federal Tag/State Code of "F157" with a scope/severity rating of "J". This standard/practice requires that the facility shall immediately consult with the physician whenever there is an accident involving the resident, which results in injury and has the potential for requiring physician intervention. The team established the beginning date of the deficiency and identified that the deficiency was "not yet removed" at the time of the IJ Call determination.

Following the IJ Call, the survey team verbally notified the entity/facility of the results of the IJ Call that an Immediate Jeopardy deficiency was being cited. This was also followed by the written notification - Form CMS-2567- Statement of Deficiencies and Plan of Correction (SOD).

The State Survey Agency also took action to complete their responsibilities for notification in accordance with their agreement with HHS/CMS and the CMS Regional Office.

### **CONCLUSIONS**

Based upon Internal Audit's inquiries, observations, comparisons and inspection of documents we concluded that:

- 1) DQA follows their Immediate Jeopardy procedures within the scope of *Procedure Summary #2221 - Immediate Jeopardy/Class A-Process.*
- 2) DQA follows the guidance provided by CMS within the scope of *SOM Appendix Q - Guidelines for Determining Immediate Jeopardy.*
- 3) DQA's Procedure #2221 complies with CMS Guidelines in *SOM Appendix Q.*

Overall, Internal Audit determined the current IJ process and procedures are compliant with CMS guidance.

No formal management action plans are required as a result of this review, and as such, no formal follow-up will occur by Internal Audit.

DIVISION OF QUALITY ASSURANCE

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April 25, 2014

Alan White, Inspector General  
DHS Office of the Inspector General  
WI Department of Health Services  
1 West Wilson Street, Room 950  
Madison, WI 53703

Dear Inspector General White:

Thank you for the opportunity to comment on the DHS-Office of Inspector General (OIG) report regarding the federal immediate jeopardy (IJ) process undertaken by the Division of Quality Assurance (DQA) staff in the Bureau of Nursing Home Resident Care (BNHRC) during the course of nursing home inspections.

DQA is committed to ensuring the health, safety and welfare of seniors and individuals residing in Wisconsin's nearly 400 federally certified nursing homes and implementing a thorough federal inspection process to arrive at often very difficult decisions regarding a nursing home's compliance with all federal regulations. A decision made regarding a potential immediate jeopardy situation, discovered through the course of an inspection, is a very important component to this sometimes complicated oversight process.

DQA agrees with the OIG recommendations contained in the report. We will include them, along with other internal initiatives, as part of the DQA's action plan for continuous quality improvement in our regulation not only of Wisconsin nursing homes but other entities we regulate.

DQA concurs with the OIG that we should track the number of calls where no IJ call was scheduled. In recognition that this data is important in the larger regulatory system of nursing home oversight and should be tracked along with those calls during which IJ discussions were conducted, since January of this year this data is being recorded for future decision-making and internal quality improvement purposes.

We further agree with the OIG recommendation to continue the use of a methodology that allows DQA to track and count the outcome of all IJ calls that were actually held, whether a citation for IJ was issued or not. This, too, is key to ensuring that appropriate decisions are reached regarding a complicated matter, which often results in significant federal enforcement actions against a Wisconsin nursing home.



Inspector General White  
April 25, 2014  
Page 2

We appreciate the time, thoroughness of the review, and effort expended by the OIG staff in performing this audit. Thank you for your consideration of our comments.

Respectfully,



Otis L. Woods  
Administrator

cc: Kitty Rhoades, Secretary, DHS  
Shari Busse, Deputy Administrator, DQA  
Juan Flore, Director, BNHRC/DQA